IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Om Prakash Singh @ Ummaid Singh & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.185/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 30-1-2004 in Sessions Case No.17/2001 passed by Dr. Chandrika Prasad Sharma, RHJS, Additional Sessions Judge Malpura District Tonk.

Date of Judgment: August 06, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Suresh Sahni] for the appellants.
Mr. R.M. Sharma]

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Mahesh Gupta, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants, four in number, along with Guman Singh were put to trial before learned Additional Sessions Judge, Malpura District Tonk, who vide judgment dated January 30, 2004 convicted and sentenced each of the appellants as under:-

Om Prakash Singh @ Ummed Singh, Sumer Singh, Shaitan Singh and Hanuman Singh:
U/s.302/149 IPC:
Each to suffer life imprisonment and fine of Rs.1000/-, in default to further suffer simple imprisonment for three months.

U/s.323/149 IPC:
Each to suffer simple imprisonment for three months and fine of Rs.100/-, in default to further suffer simple imprisonment for

seven days.

U/s.452 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.147 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.200/-, in default to further suffer simple imprisonment for fifteen days.

U/s.148 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

Substantive sentences were ordered to run concurrently.

Since accused Guman Singh died during trial, the proceedings stood dropped against him.

2. It is the prosecution case that on August 5, 2001 at 4 AM informant Kailash Singh (Pw.1) handed over a written report (Ex.P-1) at Govt. Hospital Malpura to Ram Kishore ASI (Pw.23) to the effect that in the preceding night around 10-11 PM while he and his family members were going to sleep miscreants Om Prakash Singh, Guman Singh, Shaitan Singh, Hanuman Singh, Sumer Singh along with Rudi Devi, Devi and wife of Hanuman Singh and 4-5 others armed with lathis and Sariya entered the chowk of their house. Om Prakash Singh then inflicted blow with iron rod on the head of Govind Singh and others caused injuries on his head, legs, hands and chest. Sajni Devi, Saroj and Nand Singh who made attempt to intervene were also beaten up. On that report case under sections 143, 452, 323 and 307 IPC was registered and investigation commenced. During the course of investigation Govind Singh succumbed to his injuries and section

302 IPC was added. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Malpura District Tonk. Charges under sections 302/149, 323/149, 452, 147 and 148 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 26 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. One witness in support of defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard the submissions advanced before us and scanned the material on record.

4. Indisputably death of Govind Singh was homicidal in nature. A look at Post Mortem Report (Ex.P-24) reveals that following ante mortem injuries were found on the dead body:-

> 1. Stitched wound 8.0 x 1.0cm placed obliquely on left side of fronto parietal region just lateral to mid line of vault of skull.
> The surround area of stitch line is contused and abraded with shaving of adjacent scalp hairs with clotted blood.
> 2. Abrasion 1.0 x ½cm on back of right elbow with clotted blood.
> 3. Abrasions 1.5 x 1.0 cm on left scapular region with clotted blood.
> 4. Multiple abrasions 1.0 x ½cm x ½cm on back of left elbow with clotted blood.

In the opinion of Dr. Shiv Ratan Kochar (Pw.22) the cause of death

was Coma due to antemortem injury to skull and brain.

Sajni Devi (Pw.6) vide injury report (Ex.P-19) received following injuries:-

1. Abrasion 2/10 x 2/10 Right arm on back & mid of arm.
2. Swelling 1½" x 1½" back of right fore arm 2" below elbow joint.
3. Bruise 1½" x ¾" back of right fore arm 2" below elbow joint.
4. Bruise 7" x 1" on back near to Rt. Scapula from lateral margin of right scapula to downward & medially.
5. Abrasion ½" x ½" back just below injury no.3.

Saroj (Pw.7) vide injury report (Ex.P-21) received one abrasion 1½" x ¾" on back in the mid of back.

Injury report (Ex.P-23) of Nand Singh (Pw.13) reads as under:-

1. Lacerated wound 1" x ¼" x 2/10" right leg at junction of upper 2/3 & lower 1/3rd.
2. Scalp 1" x 1/10" forehead in the mid of frontal region.
3. Scalp 1" x 1/10" right upper arm.
4. C/o pain Lt. chest.

5. At this juncture the injuries received by Ummaid Singh @ Om Prakash and Sumer Singh during the incident may also be noticed. Vide injury reports Ex.D-12 and Ex.D-13 following injuries were found:-

Ex.D-12 (Ummaid Singh @ Om Prakash):
1. Bruise 3" x ¾" Right arm on front 2 medial aspect of elbow joint.
2. Abrasion 2½" x ¼" left arm just below shoulder on front & medially.

Ex.D-13 (Sumer Singh):
1. Lacerated wound 1½" x ¼" x bone deep Right parietal region of scalp.
2. Abrasion ½" x ¼" on back left side below left scapula
3. Abrasion ½" x ½" Rt. shoulder at the tip of right shoulder.

6. Super structure of the prosecution case is founded on the testimony of Kailash Singh (Pw.1), Sajni Devi (Pw.6), Saroj (Pw.7), Lada (Pw.8) and Nand Singh (Pw.13). According to Kailash Singh on the date of incident while informant's father and son in law viz. Nand Singh and Datar Singh were going to sleep outside the house and women were singing traditional songs, their relatives viz.Om Prakash Singh @ Ummaid Singh, Shaitan Singh, Sumer Singh, Guman Singh, Hanuman Singh, Rudi Devi, Debi and wife of Hanuman with 4-5 others came to their chowk armed with lathis and rods and started hurling abuses. Om Prakash then inflicted blow with rod on the head of Govind Singh, whereas Shaitan Singh, Hanuman Singh, Sumer Singh and Guman Singh inflicted lathi blows on his person. After beating Govind Singh, they dragged him to the gate of the house. When Nand Singh and women intervened they gave beating to them also. Testimony of Kailash Singh gets corroboration from the statements of Sajni Devi, Saroj, Lada and Nand Singh. These witnesses were cross examined at length.

7. From the material on record it appears that the members of the complainant party and accused party fought together freely. Since no blood was found inside the house, it may be inferred that incident occurred out side the house of informant. Narayan Singh Ratnu, Investigating Officer (Pw.25) admitted this fact in his cross examination thus:-

> "मकान के अन्दर वाले चौक में मौका मुआयना के समय कहीं पर दीवारों व फर्श पर खून के चिन्ह नहीं मिले। अंदर जो घटनास्थल है जो पोल के अंदर जो जगह है वह कच्चा है, चबूतरी भी कच्ची है, मकान भी कच्चा है। चौक मे कोई मैने निशान झगडे बाबत नहीं देखे। पोली और चौक मे कोई खून के निशानात नहीं थे। उसके बाहर पोल से बाहर चबूतरी के पास जहां मारपीट हुई वहां खून के

निशान थे उनका हवाला नक्शे मे दिया हुआ है।"

He further admitted that:-

"यह बात सही है कि इसी घटना का क्रोस केस उम्मेद सिंह की तरफ से दर्ज हुआ था जो रिपोर्ट एक्जी डी11 है। यह बात सही है कि मेरी तहरीरी रिपोर्ट पर उम्मेद सिंह और ओम प्रकाश सिंह का डाक्टरी मुआयना करवाया गया था।"

8. Appellant Ummaid Singh @ Om Prakash appeared as defence witness (Dw.1) to substantiate the defence version that it was the members of the complainant party who came to them after consuming liquor and gave beating to him and Sumer Singh.

9. Fact situation appears from the record may be summarized thus:-

(i) In regard to one incident cross cases were registered between the complainant party and the accused party.

(ii) Appellants Ummaid Singh @ Om Prakash and Sumer Singh both sustained injuries and the prosecution has failed to explain those injuries.

(iii) Except one blow on head that proved fatal, other injuries found on the dead body of Govind Singh were abrasions.

(iv) No blood was found inside the house, where according to FIR the incident is said to have been occurred.

(v) All the four appellants and co-accused Guman Singh (died during trial) were acting in prosecution of their common object since they had gone to the place of incident armed with weapons.

10. Appellants Om Prakash Singh @ Ummaid Singh, Sumer Singh, Shaitan Singh and Hanuman Singh along with Guman Singh (died during trial) were acting in prosecution to their common object since they had gone to the place of incident armed with weapons. Pursuant to common object they made assault on Govind Singh and inflicted injuries on the person of Govind Singh out of which one proved fatal. The appellants did not appear to have intention to kill Govind Singh but they can be attributed knowledge that injuries caused by them could kill the deceased. The deceased died in the course of incident by reason of the injury, inflicted on his head. The complainant party that was also armed with weapons caused lacerated wound on right parietal region of Sumer Singh, a member of the accused party. In such situation it could not be said that the appellants acted in a cruel and unusual manner and the case against the appellants clearly falls within Exception IV of Section 300 IPC. Since all the four appellants and co-accused Guman Singh (died during trial) were acting in prosecution of their common object and had gone to the place of incident armed with weapons, they can be convicted under section 304 Part II read with section 149 IPC. The prosecution has however failed to prove the charges under sections 147, 148 and 452 IPC.

11. For these reasons, we partly allow the appeal of appellants Om Prakash Singh @ Ummaid Singh, Sumer Singh, Shaitan Singh and Hanuman Singh and instead of section 302/149 we convict the appellants under section 304 part II read with 149 IPC and sentence each of them to suffer rigorous imprisonment for five years. We however maintain their conviction and sentence under section 323/149 IPC. Sentences are ordered to run concurrently. We do not find the charges under sections 147, 452 and 148

IPC established against the appellants and acquit them of the said charges.

Since the appellant Om Prakash Singh @ Ummaid Singh has been in confinement for a period of six years and he has served out the sentence awarded to him, he shall be set at liberty forthwith, if he is not required to be detained in any other case.

The appellants Sumer Singh, Shaitan Singh and Hanuman Singh shall remain in custody till they serve out the sentence awarded to them.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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